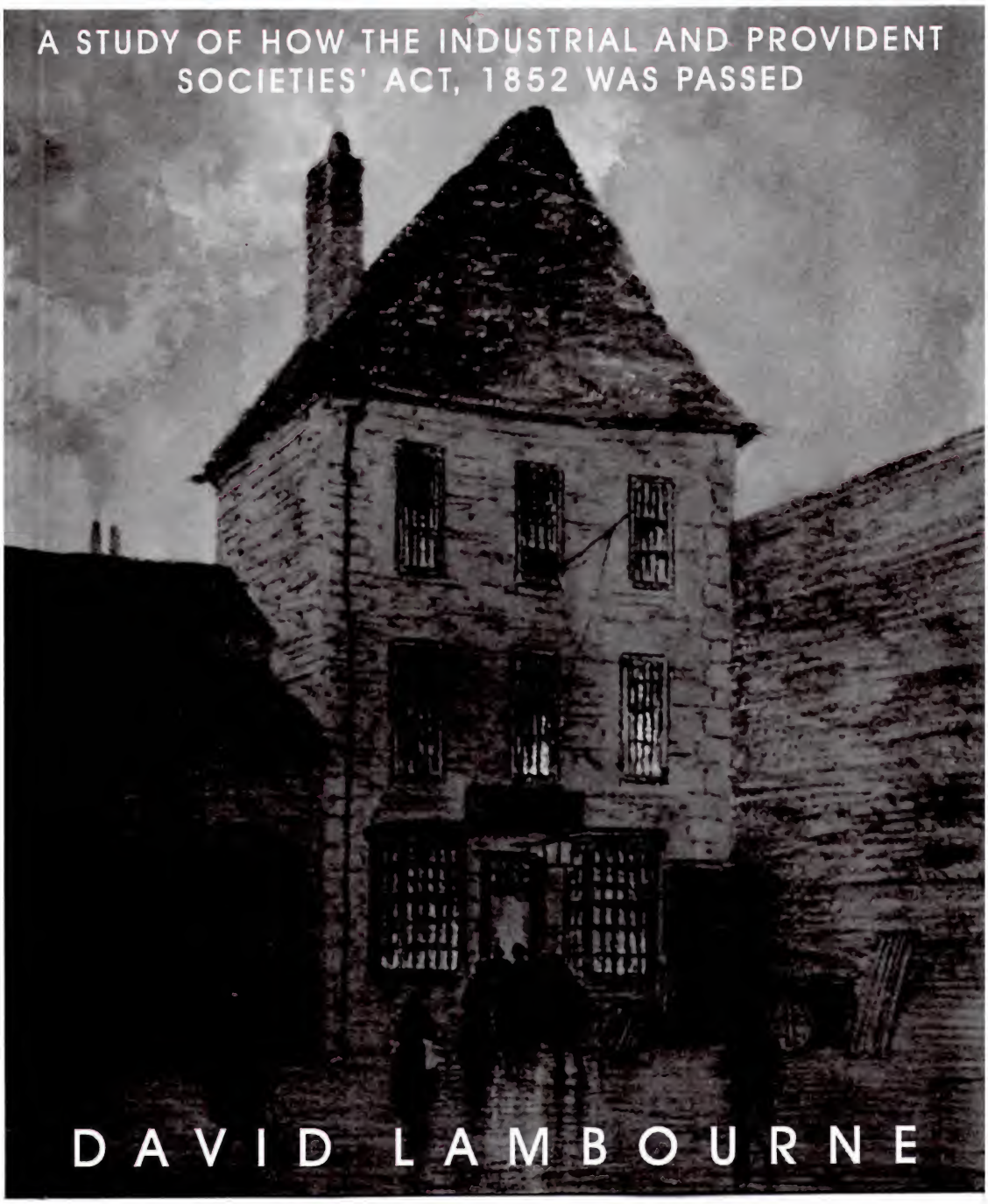
SLANEY'S ACT AND THE CHRISTIAN SOCIALISTS

A STUDY OF HOW THE INDUSTRIAL AND PROVIDENT SOCIETIES' ACT, 1852 WAS PASSED



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A study of how the Industrial and Provident Societies' Act, 1852 was passed

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The illustration on the front cover is of Thomas Wakeman's watercolour entitled 'The First Co-operative Store in England, Rochdale 1844' and is reproduced by permission of Touchstones Rochdale.

INTRODUCTION

Humans have for so long known the benefits of collaboration that the origins of co-operative enterprise are lost in the mists of time. But, although co-operative activity is therefore not the exclusive preserve of the industrial and post-industrial age, some industrial reformers in the early 19th Century were beginning to think in terms of such enterprise as a mechanism for raising the standard of living of ordinary workers: workers who so far did not seem to be sharing in the growing wealth of the country. For each of these reformers co-operative ventures offered the prospect of freeing workers from dependence on capitalist producers, whilst for Robert Owen, the idealistic prophet of the movement, and his followers, they even held the promise of eventually superseding the entire capitalist system of production and exchange.

Various individuals took up the idea of co-operation with enthusiasm. George Mudie founded a co-operative newspaper, *The Economist*, which ran from January 1821 to January 1822, whilst Abram Combe, a prosperous leather manufacturer, invested (and lost) a fortune in co-operative schemes. One of these, a store in Edinburgh, had a successful start with over five hundred families involved, but eventually failed because of a dishonest storekeeper.

In 1826 the London Co-operative Society was formed and shortly afterwards William Lovett became its storekeeper. Other similar societies were founded elsewhere but none lasted more than a few years. According to Lovett the single most important cause of failure was that societies had no legal protection for their funds. Dishonest storekeepers like the one in Edinburgh, and there seem to have been too many of these, could ruin a society without fear of prosecution.

Nevertheless, there were by 1830 some 300 societies and by 1832 nearly 500. In 1831 the first Co-operative Congress was held. Even though co-operative production was the most ambitious type of enterprise there were by now many small scale producing societies consisting of handicraftsmen of one sort or another. These groups tended to be greatly influenced by the idealistic plans of Robert Owen and by his unworkable ideas of labour exchanges or labour bazaars at which workers would exchange the products of their

labour without the intervention of middlemen. Unfortunately, most of these societies were short-lived.

It was almost inevitable that the first major success for the movement would come not from a group involved in the much more challenging business of production, where a significant capital outlay on such as tools, machines and even workshops would probably be needed and where the market for the goods manufactured might be uncertain, but one concerned with the retail of goods. This breakthrough began on 24 October 1844 when the Rochdale Society of Equitable Pioneers was registered under the relevant Friendly Societies' legislation. Whilst the aims of these Pioneers were ambitious and far-reaching it was in the setting up of their retail store which won them success and lasting fame and which provided a firm foundation for the further development of their enterprise.

The Pioneers were simple working men, mostly flannel weavers, and their families who each paid 2d a week towards the projected store, which they later increased to 3d. They rented part of a warehouse in Toad Lane, Rochdale and opened their doors for business on 21 December 1844. By 1851 there were some 130 co-operative stores of the Rochdale type with a membership of 15,000 and by 1862 about 450 societies with 90,000 members.

The principle that the Rochdale Pioneers popularised was that of paying a dividend on purchases. They sold at market prices and divided the profits between the promoters and customers. They put some of the profits back into the enterprise and returned the rest to the customers in proportion to the amount they had spent. They were therefore operating a practical system from which everyone benefited. It was only when the retail side of the business was firmly established that these co-operators eventually turned their attentions to eliminating the need to buy from wholesalers by setting up the Co-operative Wholesale Society which itself eventually turned to production.

Unfortunately, despite these successes, the legal framework for co-operative societies remained unsatisfactory. This study will show that, although co-operators had a number of options, none offered full legal protection for most groups until 1852. Many societies did register under the Friendly Societies' legislation but this only fully safeguarded them if they were producing, purchasing or selling goods for or to their own members.

At the heart of the struggle to secure the necessary changes in the law were those known as Christian Socialists. These were a group of intellectuals, Christians and, in a rather limited sense, Socialists, which included F.D. Maurice, a Church of England clergyman, Charles Kingsley, who became well-known as a writer of such as *Westward Ho*! and *The Water Babies*, Thomas Hughes, a lawyer who became famous as the author of *Tom Brown's Schooldays*, J.M. Ludlow, another lawyer who became Registrar of Friendly Societies in 1872, and Vansittart Neale, who invested much energy and money into the formation of various co-operative enterprises.

Although all the earlier experiments in co-operative production seem to have failed the Christian Socialists themselves enthusiastically took up the idea. In the early part of 1850 the 'Promoters' set up the first of their own associations. However, the Society for Promoting Working Men's Associations, as the whole group of workers and organisers in these Christian Socialist ventures were known, lasted only for a few years. But despite the difficulties with their own projects, the Christian Socialists had learnt at first hand how important it was to secure the full protection of the law and it was they who, more than any others, were instrumental in promoting and sustaining the process which effectively extended the Friendly Societies' Acts to co-operative associations.

This study, which is concerned with examining this process to full legal protection, has drawn on a substantial range of source material including the Christian Socialist periodicals, *The Christian Socialist* and *The Journal of Association*, and various Parliamentary papers including *Hansard's Parliamentary Debates*, the Reports and Proceedings of the two Select Committees on the *Investments and Savings of the Middle and Working Classes* (1850) and on the *Law of Partnership* (1851), the various drafts of the *Industrial and Provident Partnerships' Bill*, and the 1852 Act itself. It is hoped that it will prove of interest to anyone with a concern for the history and development of the Co-operative Movement in England.

CHAPTER I

Legal shortcomings and the move for a Select Committee

The struggle to secure full legal protection for co-operative associations was taken up in the first months of 1850 by the Christian Socialists, a body established to strive for the social and moral advancement of the working classes. It had been made clear by then to this small body of men, through their experiences in trying to establish associations, that there was a pressing need for legislation to extend to these bodies the provisions already granted to the friendly societies. It was largely due to the untiring efforts of the Christian Socialists, together with those of the unattached M.P. for Shrewsbury, Robert Aglionby Slaney, that legal recognition and protection was eventually obtained by the passing of the *Industrial and Provident Societies' Act, 1852.*

By 1850 there had already been at least one attempt to convince the Government of the need for such legislation, but this had proved to be ineffective. It had been decided at a public meeting of the Leeds Redemption Society to send a deputation to the Home Secretary to urge the necessity of altering the law. However, the support of other co-operators does not appear to have been forthcoming, and, although the deputation was received on 4 May 1848 and a sympathetic reply given, no action was taken.

In view of this, one might question how the Christian Socialists could have hoped to do any better since, as Charles Raven has pointed out, their numbers were made up of a 'few young barristers of no special influence, a couple of unimportant parsons, and a handful of other oddities'.[1] They counted no M.P. amongst their ranks, (although Thomas Hughes later became one),[2] and they

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[1] C.E.Raven, *Christian Socialism 1848-54*, p.281

[2] Elected to represent Lambeth in 1865

enjoyed no special positions of privilege. In addition, public opinion was indifferent and later, on occasions, even hostile to their efforts.

Despite these facts, however, the Christian Socialists did possess and combine, as perhaps only they did at this time, the qualities which were necessary to bring about this piece of social legislation. Firstly, they had legal knowledge: E.V. Neale, J.M. Ludlow, F.J. Furnivall and Hughes were all barristers, they were in touch with leading lawyers, and Ludlow had already had experience in the drafting of Acts of Parliament, for he had assisted Bellenden Ker in the drafting and revision of the *Joint Stock Companies' Winding Up Acts, 1848 and 1849.* Secondly, they had influence in Parliament through being in touch with certain individual M.P.s, although few of these were committed to serving the labour cause. Thirdly, they had practical experience of their subject. They established a Working Tailors' Association in London in 1850 and a further eleven working men's co-operative associations with their own capital, particularly that of the comparatively wealthy Neale who for many years was always willing to expend capital in the cause. Fourthly, they were able to publish a series of tracts and lecture speeches in their efforts to educate opinion on what they meant by, and expected of, socialism and co-operation. Through these, together with their periodicals *Politics for the People*, *The Christian Socialist* and *The Journal of Association,* they were able both to explain the law of partnership as it then stood and why it needed changing, and to reply to the political economists who up to this time counted many apostles of unrestricted competition amongst their ranks, including Ricardo and McCulloch. Finally, as their earlier activities had indicated, they possessed the necessary persistence and enthusiasm to keep fighting for a change in the law.

Bellenden Ker once wrote that 'the law is the birthright of a free people',[1] but undoubtedly in the period under observation it existed primarily as a birthright of privilege. When the lower classes had secured the protection of the law for their activities, for example by the various Friendly Societies' Acts, it was only after a long struggle had demonstrated clearly how desperate was the need for legislation and, at times, what the consequences would have been if such legal protection had not been forthcoming. Christian Socialists and co-

[1] H.Bellenden Ker, *Politics for the People*, 3 June 1848, p.102

operators knew, then, in the light of past experience, the enormity of the task which lay before them of breaking through the indifference of an upper and upper-middle class Parliament, and persuading it of the need for its benevolence in granting legal protection for co-operative associations. A writer in *Robert Owen's Journal* re-affirmed the situation when, in calling on the working classes 'to bestir themselves in good and earnest to obtain a short and simple law to regulate industrial associations',[1] stated that legislation would not take place, or if it did, have effect, until the working classes willed it. It fell to the Christian Socialists to create, encourage and sustain this will and to utilise it to their advantage in pressing for legislation.

The situation and dilemma with which co-operative associations were faced in relation to the law had not, however, come about as a result of a definite and deliberate oppression, as had been the case with the trade unions. But, nevertheless, the fact that no special provision had been made for them meant that associations were faced with a number of inadequate alternatives in the organisation of their affairs. The first such alternative was registration under the Friendly Societies' Acts. The Acts of 1846 and 1850[2] had guaranteed protection for bodies other than friendly societies providing they came under the Frugal Investment Clause. This clause, which, as Ludlow and Jones stated, 'afforded the first legal protection to co-operative bodies',[3] allowed societies to be formed, under certain restrictions, 'for the frugal investment of the savings of the members, for better enabling them to purchase food, firing, clothes and other necessaries, or the tools or implements of their trade or calling, or to provide for the education of their children or kindred'.[4] To obtain the benefits of this, societies had to submit their rules to the Registrar and have them certified by him as legal. However, the privileges granted to co-operative associations registered in this way were totally inadequate for their needs, for they could hold personal

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[1] *Robert Owen's Journal*, 15 Feb. 1851, p.123. The writer quoted Ludlow's article in *Christian Socialist*, Vol.i, 1 Feb. 1851

[2] 9 and 10 Vict., c.27 and 13 and 14 Vict., c.115

[3] J.M.Ludlow and Lloyd Jones, *Progress of the Working Class, 1832-67*, p.45

[4] Quoted from the Act by Ludlow and Jones, *op. cit.*, p.46

property only through trustees and could not hold real property legally at all. This condition could be overcome only by conveying real property absolutely to their trustees, upon whose honesty they thus became entirely dependent. Furthermore, a registered society existed under the law purely for the benefits of its own members, and was forbidden to engage in any dealings with the outside public. Thus although co-operative stores, like those established by the Rochdale Pioneers, which existed to supply their own members, were afforded a degree of protection, the Act was useless to manufacturing of trading associations who would themselves have to consume all that they produced. The correspondence to *The Christian Socialist* testifies to the extent to which these limitations seriously affected the situation in reality. The secretary of the Liverpool Temperance Co-operative Friendly Society summed up the position of many when he said of his members, 'they are protected by the Friendly Societies' Act, but the restrictions put upon them by that Act prevent them from carrying out the objects of their society'.[1]

Clearly, then, since the provisions under the Friendly Societies' Acts were grossly inadequate, and often inappropriate, co-operative associations had to fall back on the ordinary company law as it then stood, but the legal situation and conditions with which they were thereby faced, left much to be desired. If there were less than twenty-five associate members, these were legally all partners, and as such each member had the power to pledge the credit of the society, make away with the common stock or refuse to obey the rules of the society, and the only possible remedy against such dishonesty was an expensive suit in Chancery. Moreover, any action against a defaulting member had to be taken by all the others acting together. This situation thus posed insuperable difficulties with one dishonest member being able to ruin the whole undertaking.

If, on the other hand, the association had more than twenty-five members, it placed itself, as was claimed in the *First Report of the Society for Promoting Working Men's Associations*, 'outside the pale of legal protection, unless it chose to register under the Joint Stock Companies' Act; the provisions of which, being wholly framed for bodies of persons subscribing capital merely and not labour, were

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[1] Letter to *Christian Socialist*, Vol.ii, 2 Aug. 1851, p.72

totally inapplicable, and too expensive in any case to have been of use'.[1] It was the regulations that had to be complied with before a body could register as a joint stock company that rendered this recourse to legal protection unsuitable to working-class associations. There were a number of unfortunate clauses in these regulations, notably the one which laid down that the company's capital had to be divided into transferable shares. The acceptance of this clause would have exposed associations to the risk of having their shares bought up by persons with no interest in the work, and of thus being reduced to the level of an ordinary trading firm. This danger was to be seen in some of the Christian Socialist associations, particularly the Pimlico Builders, who were eager to bring in as associates men not actually taking part in the trade; Ludlow had to pull them up smartly and draw their attention to the threat to self-governing collective mastership. Despite the regulations and expense, though, some associations did register as joint stock companies, but these were necessarily the bigger and wealthier societies like the Birstal Joint Stock Provision and Clothing Company, which did £15,000 of business per annum and had six hundred and fifty-seven members, and the Bacup Commercial Company's Mill, which had an annual turnover of £8,500.

The majority of trading and productive associations, however, had to operate under the partnership laws and face the numerous problems created by these. One particularly difficult problem arose because of the fact that legally on every occasion a new associate joined or an old one left a new partnership was formed. Thus unless there were proper and expensive legal documents drawn up at each such time there could well be difficulties in the event of its being necessary to sue any debtor of an association, since dispute might arise over who were the proper parties to the suit. Conversely, these difficulties served as a barrier to persons trusting working-class societies because of the problem of enforcing claims against a society. This anomaly might be partly surmounted by drawing up deeds between the members of an association giving the whole property to a few of the partners to act as managers or by vesting it in trustees, but there remained the need for expensive legal documents to be executed on a change of partners or trustees, and this method

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[1] p.7

itself could be applied with certainty only to associations of not more than twenty-five members.

Associations were also faced with the problem of raising capital. The existing law of unlimited liability was almost certainly serving to restrict the number and sizes of societies, just as it was limiting small private businesses, for while there were both capital and labour available they were likely to be kept apart all the time that a prospective investor was faced with the prospect of being liable, as Lord Eldon said, for 'his last shilling and his last acre'.[1] Being personally liable for all the debts of an association, even in the light of a small investment, was not the situation many would relish, but when one associate was able, as Ludlow claimed, to 'seize on the property.....to any extent' without committing a legal offence, only the wildest gambler was likely to risk his money. Clearly, as Ludlow also pointed out, 'money will not be lent and.....workmen will not associate'[2] under such conditions.

Thus if a satisfactory limited liability law could be obtained, those with some capital to invest would probably be prepared to do so in co-operative associations. Limited liability could be secured at that time by Act of Parliament or by Royal Charter, but the price of the former varied from £1,000 upwards whilst the latter could rarely be obtained for less than £800 or £1,000. Such expense was within the reach of combinations of wealthy capitalists but far beyond the means of working-men's associations. As Ludlow said, the law 'shelters the rich, but it does not protect the poor'.[3]

This, then, was the situation in which co-operative associations found themselves in relation to the law, and by it many were forced to close or severely limit their activities. The Tailors' Association at Bishopwearmouth, Sunderland, was not alone in claiming that 'difficulties arising principally from the state of the law' had forced its members 'to abandon for the present their hopes of association'.[4]

It was, however, possible for societies to circumvent some of the legal problems with which they were faced, as the Christian

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[1] Quoted in *Report from the Select Committee on the Law of Partnership*, p.6

[2] Ludlow, *Chamber's Papers for the People*, p.21

[3] *Ibid.*, p.21

[4] Letter to *Christian Socialist*, Vol.ii, 2 Aug. 1851, p.72

Socialists themselves quickly found out. The Society for Promoting Working Men's Associations managed to evolve a reasonably successful formula suited to their own peculiar needs on the basis of the legal knowledge of Ludlow and the first-hand experience of the French associations of the Secretary to the Society, C. Sully. Administrative activities were split between the Council of Promoters, which represented the promoters, and the Central Board, which represented the managers and associates of each association. The elaborate constitution provided, amongst other things, that each associate should first become a probationer, and that there should be periodic statements and examinations of accounts. The whole of the property of the Society and of each association was vested in trustees, and it was in the names of these that loans were made to the managers.

The money raised by the Society was secured against involving its lenders in unlimited liability by giving all sums to the manager of each association as a loan on the security of a bill of sale on the premises and stock given under his hand. For the repayment and safety of the money they were thus wholly dependent upon the honesty of the manager, over whom, not surprisingly, they inserted in their rules certain controls whilst the debt was outstanding.

Associations could, therefore, overcome certain difficulties providing they were able to find benevolent and humanitarian sponsors, but even so a scheme like that devised by the Christian Socialists could not be legally enforced. The constitution remained a private compact dependent for its observance on the honesty of all members, particularly managers, a condition that seemed to have promoted a sense of insecurity which had its bad effects upon the morale of the workers. Success rested entirely, as Ludlow and Sully wrote, on the recognition of every associate of his subordination to, and dependence upon, his association.[1]

Therefore, co-operative associations, even like those promoted by the Christian Socialists which enjoyed all possible advantages, desperately needed an Act of Parliament to establish recognition of, and protection for, their activities. It fell largely to the Christian Socialists to press for this objective and, as Ludlow claimed, to stir

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[1] See Ludlow and Sully, *Tracts on Christian Socialism*, No.V

to action those politicians who stood 'to amend what is evil' in society.[1]

In fact, efforts were made by the Christian Socialists to remedy the prevailing situation during the early months of the existence of their movement. At this point Ludlow drew up a Bill to provide full legal protection to associations by bringing them under the Friendly Societies' Acts. It was hoped that Lord Ashley, who had done much practical work on behalf of the working classes, would introduce the Bill into Parliament, but after some correspondence between him and Ludlow during May and June 1850, the former declined to help. Ludlow later claimed that despite Ashley's enthusiasm for the legal protection of the working classes, the measure was 'apparently too revolutionary for his philanthropy'.[2] Nevertheless, by now a more fruitful channel towards legalisation had been opened up in another quarter.

This first significant step was initiated, however, not by the Christian Socialists, but by Robert Slaney, who, on 16 April 1850, moved in the House of Commons, 'for the appointment of a Committee, to suggest means for giving facilities for safe investments for the savings of the middle and working classes; and for affording them the means of forming societies to insure themselves against coming evils frequently recurring'.[3] Slaney, who from an early point in his Parliamentary career was, as the Duke of Richmond claimed, known for his 'benevolent exertions to ameliorate the conditions of the poor'[4] and who had been campaigning through the pen on their behalf since at least 1819, when he published *An Essay on the Employment of the Poor,* was the victim of much criticism in relation to his Parliamentary efforts. Even Ludlow asserted that whilst Slaney was a 'very worthy and well-meaning' man he was 'always fumbling after some good end or other' and 'was seldom able either to see it clearly or to grasp the means of carrying it out'.[5] Nevertheless, despite such comments, valid though they may have been, and despite Raven's view that the

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[1] Ludlow, *Politics for the People*, 27 May 1848, p.56
[2] Ludlow, 'Autobiography', p.484
[3] *Hansard*, 16 April 1850, p.422
[4] *Hansard,* New Series, Vol.xxiii, p.481
[5] Ludlow, 'Autobiography', p.486

eventual Act which became known as Slaney's Act conferred on the man 'an undeserved immortality',[1] the evidence forces one to conclude that the contribution of Slaney, in initiating and sustaining Parliamentary interest, was indispensable to the Christian Socialists in their eventual success in securing the passage of the Industrial and Provident Societies' Act, 1852.

[1] Raven, *op. cit.*, p.289

CHAPTER II

The proceedings and report of the first Select Committee

Slaney, in moving for the Select Committee, said that he 'did not ask for any advantages for the working classes which were not enjoyed by other classes', but that 'those impediments and obstacles which stood in the way of an investment for their savings'[1] should be removed. He called also for the amendment of the law of partnership to include limited liability, a point over which the President of the Board of Trade, Henry Labouchere, who was himself at that time opposed, said there would be great differences. Labouchere, who was to be a great stumbling block to the advancement of the proposals for legal reform, did not, however, oppose the motion, and this was as a consequence carried.

On 25 March 1850, the Committee was nominated and Slaney was appointed as chairman. It is quite clear, from the way that Slaney conducted the proceedings, that he was, from the outset, in complete sympathy with the Christian Socialists and with co-operative associations. The other Committee members included William Ewart, an advanced liberal in politics and famous for his opposition to capital punishment, who had seconded Slaney's motion, Edward Cardwell, a barrister and Peelite, J.A. Smith,[2] a banker and staunch liberal who turned out to be in opposition to the Christian Socialists especially over the question of limited liability, Frederick Peel, the second son of Sir Robert Peel, and Labouchere. The Committee, which sat on nine occasions, was granted the power to, amongst other things, call on persons to give evidence before it, and, in fact, the testimony of these made up the entire proceedings.

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[1] *Hansard*, 16 April 1850, p.423

[2] Who Ludlow later described as a 'very able and strenuous opponent'. ('Autobiography', p.487)

Slaney, having seen the Committee established, then turned to a barrister, H.H. Vaughn Johnson, whom he employed to give evidence. By coincidence, Johnson was a friend of Thomas Hughes, and, as a result, he asked him to bring information relating to co-operative associations to the Committee. Hughes immediately recognised that this situation could be used to further the aims of working men's associations and he brought the matter before the Christian Socialists' 'Society'. The Society sent its experts from both the Council of Promoters and the Central Board to the Commons Committee to, as Brentano stated, 'expound and demand those alterations to the legislation which were necessary for the prosperity of the co-operators'.[1] Moreover, the fact that the Committee had taken no action or evidence until the Christian Socialists, headed by Ludlow, began to testify enabled the latter to turn its proceedings to their advantage and to ensure that the legal plight of the co-operative associations was given a fair and proper hearing.

The first witness to be called by the Select Committee was Ludlow, who covered most aspects of the issue under discussion. At the outset the question was raised as to whether or not there should be limited or unlimited liability in partnerships, a question over which Ludlow was perfectly clear. Although he was willing to concede that the form of limited partnership which existed in France, called 'en commandite', where a few partners were liable without limit and the liability of the rest was limited to their subscriptions, had some advantages in undertakings with small numbers of partners, he expressed the opinion that 'in any numerous partnership you want absolutely limited liability'.[2] There was clearly a difference of opinion on the Select Committee over the issue of limited liability, and for this reason much of Ludlow's evidence was taken up with justifying his standpoint, just as most of the other witnesses were questioned in some depth on the matter. In attempting a justification he claimed that the law of unlimited liability was tending 'to produce, in many instances, insecurity and fraud as soon as you come to large partnerships'.[3] He claimed, further, and in so doing went beyond the view held by many advocates of limited liability,

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[1] L.Brentano, *Die Christlich-Soziale Bewegung in England,* p.50
[2] *Report from the Select Committee* (1850), p.3, qu.12
[3] *Ibid.*, p.1, qu.7

that no restrictions were necessary, only that parties trading with a limited liability partnership should be aware of the limit to which the partners were liable and that to which they were not.

As for the associations, he demonstrated their dilemma by referring to the Frugal Investment Clause, and their desire not only to be able to purchase for themselves but also to be allowed to sell. Ludlow urged the introduction of provisions for co-operative bodies similar to those enjoyed by the friendly societies such as the power to associate in unlimited numbers and the right to sue and to be sued. The working classes, he said, were well satisfied with the machinery of the Friendly Societies' Acts, and he requested an extension to associations of the same restrictions: 'registration, perfect publicity, and a tribunal of their own in the person of the Registrar of Friendly Societies, who should settle all disputes'.[1] Registration, he thought, would itself be conducive to good government in the societies and would be popular with the working classes.

Ludlow, who was able, in his evidence, to refer to various Christian Socialist co-operative associations as well as to his experience with associations in Paris, expressed an opinion towards the end of his evidence which suggests that his Christian and humanitarian motives had the paternalistic edge which was so characteristic of many Victorian reformers. On being asked if he felt that the provision of legal facilities for co-operative bodies would create contentment among the lower classes and 'tend to foster habits of forethought and providence', he replied: 'I cannot say that I know of any more powerful means of increasing the security of the country'.[2] Furthermore, in reply to the suggestion that full legal protection might lead these classes to false hopes of profits which would be followed by disappointments, he stated that in fact, if this were the case, 'it would promote their submission to things as they are'.[3]

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[1] *Ibid.*, p.2, qu.9

[2] *Ibid.*, p.10, qu.101

[3] *Ibid.*, p.10, qu.105. It is only fair to point out, however, that despite his paternalism, Ludlow's respect for the dignity of the 'humbler classes' was much in advance of that of the majority of his upper and upper middle class contemporaries.

Ludlow was followed by Neale, whose evidence covered much the same ground. Neale, too, stated the need for limited liability, since the existing law was creating 'a good deal of impediment to investments by prudent persons'.[1] He said that he was a member of the Committee on the Law of Partnership on the Liability of Partners for the Society for the Amendment of the Law, and handed in the Report of this Committee which recommended limited liability after comparisons had shown that Britain was alone in all Europe and America in not having a limited liability law. Neale did, however, feel that if this was introduced there would have to be a safeguard relating to the transfer of shares. In view of this, he recommended that the accounts be submitted to a public officer before any transfer of shares should be allowed. As to the need for legalising associations, Neale, like Ludlow, believed that an extension of the provisions under the Friendly Societies' Acts (including registration) to co-operative associations would be suitable and adequate. In addition, Neale, also, demonstrated that his motives were tinged with paternalism in his statement that the Government, in permitting legislation, 'could not do a more acceptable thing to the working classes, nor.....a more beneficial thing for the country, than to give these facilities. I think it would produce a great deal of contentment among the working classes; and more than that, I think they would get much benefit from them.'[2] The granting of legal protection for co-operative associations 'would make the working classes feel that the richer classes really had their welfare at heart'.[3]

Thomas Hughes was called as well to give evidence. He, too, advocated giving full legal protection to co-operative associations and stated that the Joint Stock Companies' Act, through its general cumbrousness and the cost of registration under it, was 'such that it precludes people with small capital from availing themselves of the benefits which it gives'.[4] Furthermore, he claimed that one of the main difficulties posed to working men's associations by this Act was that in every joint stock company the shares had to be transferable. What was really required, he said, was the power to

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[1] *Ibid.*, p.14, qu.152
[2] *Ibid.*, p.24, qu.245
[3] *Ibid.*, p.20, qu.205
[4] *Ibid.*, p.43, qu.431

establish limited liability partnerships with non-transferable shares, so as to prevent the businesses being bought up, with the power to raise money and with rules somewhat similar to those of the friendly societies, by which there might be 'a summary remedy against fraudulent members, and a summary mode of enforcing the rules'.[1] Moreover, he argued that it was important that associations of working men had the power to appoint managers and the right to extend their numbers. Hughes, whilst himself desiring limited liability, stated that he felt that working men for their part would not press for it, since 'they wish to throw their whole capital, all their labour, and all their present property into the concern: they do not feel inclined to ask for limited liability if it would stand the least in the way of their obtaining power to do this legally'.[2]

Other Christian Socialists, also, were called to give evidence. These were Lechevalier, a barrister who later rejected Christian Socialism and who testified solely on the need for limited liability, Lloyd Jones, a great campaigner for the co-operative cause who referred to the Rochdale Pioneers and the problems which they faced, along with other societies, through being registered under the Frugal Investment Clause of the Friendly Societies' Act, and three working men, Joseph Millbank, Walter Cooper and James Clarkson. Millbank, a watchmaker, stressed, as earlier witnesses had done, the need for limited liability, so that parties would advance capital to associations, and the need for legal recognition and the facilities for enforcing rules and preventing fraud. On the latter issue, he pointed out that if an association took in as an associate a person with 'legal liabilities weighing upon him', then it shared them immediately, and if that associate 'incurs them after he becomes a member of the working association, the resources of the association are pledged legally to their discharge'.[3] Cooper, a journeyman tailor and manager of the Working Tailors' Association, explained how he had to be the legal possessor of the funds advanced by the Promoters to his association in order not to expose the association to the dangers of a dishonest member. This was not really a desirable arrangement, he claimed, and was contrary to the spirit of association.

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[1] *Ibid.*, p.43, qu.441
[2] *Ibid.*, p.45, qu.474
[3] *Ibid.*, p.48, qu.514

Nine other witnesses were examined including Sir Denis Le Marchant, a high ranking official at the Board of Trade whose evidence was, as Ludlow somewhat sarcastically claimed, 'about as clear, full, novel and convincing, as that of persons in official situations usually is',[1] and two acknowledged experts in their respective fields. These were H. Bellenden Ker, who was Counsel to the Board of Trade and one of the greatest living authorities on Company Law, and John Stuart Mill, who was then at the height of his fame and generally accepted to be the leading economist of the day. The first, Bellenden Ker, was the barrister in whose chambers Furnivall and Ludlow had read, and it was the latter who was able to induce him to appear against his will before the Select Committee. However, Bellenden Ker, whose wife had become, on the invitation of Ludlow, a member of the Superintending Committee of the North London Needlewomen's Association, had already expressed his interest in Christian Socialist activities through an article in *Politics for the People*, in which he wrote that 'I cannot help thinking you are hitting the right nail on the head'.[2] In fact, he had long been recognised as a legal reformer,[3] and in the same article actually wrote that 'those who have made the laws hitherto have been more mindful of themselves and of their own class than of the people in general'.[4] Despite his reputation though, his evidence turned out to be disappointing in some respects as far as the Christian Socialists and co-operators were concerned, primarily because the Committee, which remained divided on the question of limited liability, insisted on concentrating, in the main, on this issue.

He clearly objected to the introduction of a limited liability law to cover trading and commercial organisations, on the grounds that this would encourage wild speculation and fraudulent activity. Even so, he was willing to concede that it should be extended to more undertakings of certain types, such as those requiring very large capital and those established 'for the peculiar benefit of the

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[1] *Christian Socialist*, Vol.i, 14 Dec. 1850, p.51

[2] *Politics for the People*, 3 June 1848, p.102

[3] For example, he had been a member of the Public Records Commission which sat in 1833 and whose Report formed the basis of various Bills which amended the Criminal Law.

[4] *Politics for the People*, 3 June 1848, p.102

neighbourhood',[1] through the reduction of the expense involved in obtaining Acts of Parliament or Charters. He stated that it would be pointless to consider altering the law 'merely to afford a convenient investment for small portions of capital or savings of the middle and working classes'.[2] To encourage these classes to become speculators or to search out for profitable investments was not, he felt, desirable in this country 'where there is plenty of capital for the ordinary purposes of trade'.[3] Despite the fact that he was willing to concede that the law of unlimited liability was likely, in many cases, to prevent the formation of undertakings involving workmen and capitalists acting together, what he did say about co-operative associations was favourable.

The associations, he said, were perfectly free to register as joint stock companies, but the whole scope of their activities was approximated rather to those of friendly societies. The Joint Stock Companies' Act, he claimed, catered for partnerships starting at once with 'a definite capital, contributed by the members, divided into a given number of shares, the future increase of which is to be limited by the deed itself, and the shares in which shall be prima facie transferable'. Co-operative societies, on the contrary, were concerned either with a 'gradual accumulation of capital, contributed in very small periodical payments by the members', or with the obtaining of it on loan, 'to be paid off by the exertions of the members'. The number of members was essentially progressive, if not unlimited, and it was not possible to in any way limit future additions to capital 'at the foundation of the society; whilst finally the common character of all is not speculation, but purposes of a provident nature'.[4] On the basis of this, he recommended that working-class associations should be removed from the position of having to adopt the machinery of a joint stock company and instead be given legal recognition on terms similar to those enjoyed by the friendly societies. All that was required was a slight extension of the Frugal Investment Clause to allow the formation of societies empowered to sell as well as to purchase.

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[1] *Report from the Select Committee*, p.60, qu.665
[2] *Ibid.*, p.59, qu.665
[3] *Ibid.*, p.61, qu.665
[4] *Ibid.*, p.71, qu.741

The crowning success for the co-operative cause came, however, from the evidence of the man who Charles Kingsley described as the 'greatest living professor'[1] of political economy, John Stuart Mill. When Mill was originally approached, he, like Bellenden Ker, stated that he was reluctant to appear. Thomas Hughes recorded twenty years later that when the Christian Socialists sent a deputation, including him, to see him, Mill agreed to come but told them that 'he had never supposed he could have so little sympathy with any social movement for the objects we (i.e. the Christian Socialists) were aiming at as he had with us'.[2] When he actually appeared before the Select Committee, Mill demonstrated that he had completely reversed his viewpoint, and in fact provided a positive case that co-operative associations of the type created by the Christian Socialists were not 'ill-advised or foredoomed to failure'.[3] The existing law of partnership, he stated, caused obstacles of various kinds to hinder the improvement of the working classes, particularly 'the obstacle which they throw in the way of combinations among the workmen engaged in a particular branch of industry, for the purpose of carrying on that industry co-operatively, either with their own capital or with capital that they borrow'.[4] He expressed the view that there was nothing which the Legislature could do 'in the present state of society, and the present state of the feelings of the working-classes' which 'would be more useful'[5] than to grant to working men's associations the facilities both to prevent fraud amongst themselves and to enforce their rules.

To Mill, the possibility of fraud seemed an even greater obstacle to associations finding men to advance them capital than was the need for limited liability. However, he was clearly in favour of limiting the liability of partners at least to a point of 'en commandite', though in his view 'the great value of a limitation of responsibility, as related to the working classes, would be not so much to facilitate the

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[1] C.Kingsley, *Who are the Friends of Order*?, p.7

[2] T.Hughes, The Present Position of the Co-operative Movement (A paper read to the Social Science Association), *The Co-operative News*, 2 Dec. 1871, p.145

[3] Raven, *op. cit.*, p.293

[4] *Report from the Select Committee*, p.77, qu.837

[5] *Ibid.*, p.77, qu.845

investment'[1] of their savings, as to cause 'cautious and prudent'[2] persons to come forward and invest in useful undertakings. Mill, unlike many contemporary observers, saw no reason why, given proper legal facilities, co-operative associations should not succeed. 'I think', he said, 'there is no way in which the working classes can make so beneficial a use of their savings both to themselves and to society, as by the formation of associations to carry on the business with which they are acquainted, and in which they are themselves engaged as work-people.'[3]

Mill went on to say that co-operative associations of working men would, in many cases, serve to cut off the cost of the intermediate agency between the producer and the consumer, and thus tend to lower prices. In referring to the high level of unproductive labour caused by the existence of so many distributors, he said that anything which would serve to reduce their numbers would be advantageous. Co-operative associations, then, were to be given every encouragement, for they certainly had 'very great advantages over any other investments for the working-classes'.[4] He even went as far as to compare associations favourably with ordinary joint stock concerns and pointed out that they had the advantages of employing capital in businesses with which all the associates were equally familiar, which had their undivided daily attention and in which the associates were in a position 'to keep a much better control over the managers, and to be much better judges of who would be the best managers'.[5]

In the official Report, which was ordered to be printed, along with the proceedings, as a Government Blue Book on 5 July 1850, the Committee clearly revealed that it had been convinced by the testimonies of Mill and the Christian Socialists. The Report pointed out that the law was affording to co-operative associations 'no effectual remedy against the fraud of any one dishonest contributor or partner' and no facility for enforcing 'the rules agreed for mutual government'. The removal of these difficulties in any measure, it

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[1] *Ibid.*, p.78, qu.847
[2] *Ibid.*, p.78, qu.850
[3] *Ibid.*, p.79, qu.852
[4] *Ibid.*, p.88, qu.938
[5] *Ibid.*, p.89, qu.938

stated, 'would be peculiarly acceptable to the middle and working classes'.[1] The Committee did not express an opinion either way on the issue of limited liability for associations, but reflected Bellenden Ker's standpoint in suggesting that, while limited liability charters should be granted with the 'greatest caution', they ought to be granted at a 'far more reasonable cost'.[2] In concluding its Report, the Committee recommended that the question of co-operative associations, along with the other matters that it had considered, such as investments in land, should be 'speedily attended to by the Legislature' because 'the great change in the position of multitudes', through the processes of industrialisation and urbanisation, was making it increasingly necessary that 'corresponding changes in the law should take place'.[3]

In the following months, commencing in November 1850, the evidence taken before the Committee was serialised and edited in *The Christian Socialist* by Ludlow and others, for all co-operators to read. The Committee's work was described as 'one of the most important enquiries for the welfare of the working classes ever undertaken by Parliament',[4] though it was pointed out that unfortunately, whilst acknowledging the legal difficulties confronting co-operative associations and urging their removal, it did not recommend any specific legal remedy. Ludlow was particularly disappointed that the Report did not 'distinctly allude to the expediency of applying the machinery of the Friendly Societies' Acts to working men's industrial associations'.[5]

However, in the autumn of that year (1850), Ludlow was asked by Labouchere to draw up a Bill to provide legal protection to co-operative associations to be submitted to the Board of Trade. This Bill, which contained all the proposals of the Christian Socialists, including limited liability, was discussed amongst the other Christian Socialist lawyers, examined by the Law Officers of the Crown, and then, at the start of the following session, submitted to the Liberal

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[1] *Ibid.*, p.4
[2] *Ibid.*, p.3
[3] *Ibid.*, p.4
[4] *Christian Socialist*, Vol.i, 9 Nov. 1850, p.10
[5] *Ibid.*, 12 April 1851, p.187. This recommendation was, however, almost included. It was contained in the Draft Report.

Government through Robert Slaney. The Government approved the Bill, accepted it without omitting a single clause, and even undertook to carry it through Parliament. At the same time the Promoters lobbied some forty Members of Parliament of various political persuasions, and all of these, with the exception of the Ultra Free Traders, promised to support the Bill.

Meanwhile, the situation in the country as a whole was making legislation increasingly necessary. Working-class co-operative activity was ever expanding, a fact which was confirmed by the continuous stream of enquiries, information and reports which flowed into *The Christian Socialist* following its initial publication on 2 November 1850. Organisations parallel in scope to the Society of Promoters were being set up in several towns, such as the General Labour Redemption Society of Bury and the Halifax Working Men's Co-operative Society, and associations were springing up throughout the north of England and Scotland. This increasing activity, which was nurtured and encouraged by the legal and co-operative work of Ludlow and his colleagues, caused the Christian Socialists to emerge as the focal point of the whole co-operative movement, and, as a consequence, to become victims of hostility from those classes and parties within society which saw their particular religious or political positions threatened. Brentano, in his work *Die Christlich-Soziale Bewegung in England*, has demonstrated the extent of the vehemence which broke out against them in so many newspapers and periodicals. *The Times*, then, as Brentano has claimed, 'the most powerful organ of the ruling economic doctrine', refused at the end of 1850 to accept any advertisements concerning the Christian Socialists, *The Reasoner* objected to the Christian tone of their efforts, *The Eclectic Review* of the non-conformists opposed the relationship of the leaders of the movement to the established Church, the High Church *Guardian* objected to their liberal viewpoints, whilst the Chartists denounced their co-operative associations as devices of the upper classes, and *The Edinburgh Review*, the organ of the Whigs, attacked them as 'ignorant despisers of the only philanthropic science of laissez-faire'.[1]

Despite the hostility from these and other quarters, Ludlow recognised the need for favourable public opinion and, on 1 February

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[1] Brentano, *op. cit.*, p.51

1851, he made this clear to co-operators in *The Christian Socialist.* The opening of the next Parliamentary session was imminent, and he appealed to the working classes 'to bestir themselves in good and earnest' for the securing of suitable legislation for industrial associations. He urged them to petition, to 'besiege the members for their respective constituencies with letters and deputations' and to 'create that pressure of public opinion which alone is generally capable of stirring Whig ministers to action'.[1] In the following issue of *The Christian Socialist*, the Council of Promoters published a form of petition to be filled in and sent by co-operators to Parliament. The petition requested that the provisions under the Friendly Societies' Acts be extended to all associations of working men, and mentioned that such provisions had already been extended to building societies and loan societies.

The recognition of the need to create favourable public opinion led Ludlow to deliver a public lecture on 12 February 1851, which was aimed at answering the opponents of Christian Socialism, such as *The Edinburgh Review*, *The Eclectic Review* and *The Reasoner*. In this lecture he outlined forcibly what the Christian Socialists intended to do in relation to the law. He said that they intended to inscribe 'the principles of Socialism – Christian Socialism – on every page of the Statute book', whilst, in the meantime, they were not prepared to be intimidated by an adverse legal situation. He said, 'we do aim at developing its (i.e. Christian Socialism's) influence, not against the law of the land, not by its violent subversion, but under its protection, through its means, within its limits; but so long and so far as that protection is denied, we aim at being a law unto ourselves'.[2]

Meanwhile, on the first day of the new session, 4 February 1851, Slaney had given notice of his intention to bring forward a motion for a Select Committee to again consider the savings of the middle and working classes, with the added duty of considering possible improvements to the law of partnership. The Christian Socialists greeted this new move with approval and claimed that, while 'it should not affect the enacting of such measures as the Committee of last year has already recommended as beneficial', the 'larger enquiry

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[1] *Christian Socialist*, Vol.i, 1 Feb. 1851, p.105

[2] Ludlow, *Christian Socialism and its Opponents*, p.3

cannot be but advantageous'.[1] Slaney brought forward his motion on 18 February but was counted out. However, two days later the motion was put and passed, and a Select Committee was appointed to 'consider the Law of Partnership, and the expediency of facilitating the limitation of liability, with a view to encourage useful enterprise and the additional employment of labour'.[2]

[1] *Christian Socialist*, Vol.i, 15 Feb. 1851, p.125
[2] *Hansard*, Third Series, Vol.cxiv, p.850

CHAPTER III

The second Select Committee and the Industrial and Provident Partnerships' Bill

In moving for this second Select Committee, Slaney claimed that the great division between wealth and poverty, which was existing in a society in which there was plenty of capital and plenty of labour, could only be attributed to the fact that there 'must be something wrong in the system which permitted such a state of things to exist'. This fault in the system, he said, lay in the prevailing law of partnership. Slaney referred to the problems facing those who wished 'to combine their savings and industry' in raising further capital which arose because of the unlimited liability law, and because one individual in a partnership could, through fraud, throw that body into a state of confusion. He mentioned the previous Select Committee and its recommendations, and quoted the evidence of John Stuart Mill in calling for a limitation of responsibility in partnerships and associations to the amount of each individual's stake in the concern. Unlimited liability, said Slaney, 'prevented enterprise and employment, and kept down the price of wages'. The lower classes were thus prevented from combining together 'for the welfare of their neighbours and their own advantage'. He said, further, that 'if the masses of the people were allowed fair play for their industry, an increase of capital and wealth would be immediately manifest'.[1]

In replying to the motion, which was seconded by William Ewart, Labouchere stated that, though he himself had no decided opinion, the great authorities were almost equally divided on the question of limited liability. However, he agreed that the matter needed close scrutiny before any great change in the law of partnership was contemplated, and thus stated that he had no objection to a new Select Committee with Slaney as chairman as before. This new Committee, which contained five of the members of the previous one, including Labouchere, Ewart and Slaney himself, also, amongst

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[1] *Hansard*, Third Series, Vol.cxiv, pp.844/8

others, included Tufnell and Southeron, the seconders of the Bill which eventually gave legal protection to co-operative associations, Chichester Fortesque, a liberal who was later destined to be President of the Board of Trade, and J.A. Roebuck, an independent politician professing advanced political opinions, who was a disciple of Bentham and a friend of John Stuart Mill.

In addition to the people who were called before this Committee to give evidence, a 'Form of Queries' was sent out requesting the written opinions of certain authorities on the question of limiting 'the liability of partners to the amount of their respective subscriptions in certain companies or partnerships duly registered'.[1] Thirteen people of different professions, including John Stuart Mill, H. Bellenden Ker and Ludlow, were in receipt of this request, and the majority of these made replies which were in varying degrees favourable to the introduction of limited liability into partnership concerns. Bellenden Ker, however, continued with his stand that he had made before the previous Select Committee that limited liability was inexpedient because 'there is always a sufficiency of capital for all ordinary commercial enterprises'.[2] This view would certainly have been disputed by many men involved in such 'ordinary commercial enterprises', but Ker was prepared to concede that his own suggestion before the previous Committee, which was about to be taken up by the Government, to make charters easier and cheaper to obtain, would serve as a useful preliminary test as to whether or not a general limited liability law should be introduced in the future.

Mill and Ludlow, on the other hand, both felt that partnerships of limited liability, under proper regulations, could be 'most usefully introduced in this country', and would be, in particular, 'a valuable aid to undertakings of general usefulness'. The two men were more or less in agreement over the safeguards which should be introduced with limited liability. Both felt that publicity was generally desirable as a restriction against fraud and rash speculation, and that the names of the limited partners with the amount for which they were each responsible should be 'recorded in a register, accessible to all persons', together with the portions of the amounts involved which had been paid up. Ludlow recommended further that there should be

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[1] *Report from the Select Committee* (1851), p.159
[2] *Ibid.*, p.165

regular auditing of accounts with the publication of half-yearly balance sheets, and that there should be provisions for the dissolution of a partnership in the event of losses 'being incurred to the amount of a given proportion of the capital', along with penalties 'on the directors or managing partners, and all persons conniving with them, in the event of such losses being kept concealed'. Ludlow concluded by saying that the working of the Joint Stock Companies' Winding Up Acts during the previous three years bore arguments in favour of limited liability, through a practical revelation of the fraud, rash speculation and disputes between co-partners that the unlimited liability law was causing.[1]

Of the fifteen witnesses called to give evidence before the Select Committee, all but two were either concerned with commercial undertakings or were members of the legal profession. These witnesses included J.G. Philmore and James Stewart, both barristers, R.G.C. Fane, a Commissioner in Bankruptcy, Leoni Levi, a merchant and author of some note on the commercial law of this and other countries, including the work *Commercial Law: its Principles and Administration*, William Cotton, a former Governor of the Bank of England, and several men with experience of limited liability partnerships in various parts of Europe and America. Although the Committee's brief was to consider the law of partnership generally, as well as 'the expediency of facilitating the limitation of liability',[2] this latter issue made up the bulk of the proceedings. However, all the witnesses, with the notable single exception of Cotton, who voiced his certainty that 'en commandite' would encourage fraud and rash speculation, were either cautiously or positively favourable to introducing limited liability into partnerships at least to a point of 'en commandite'.

William Hawes, a trader from London, outlined adequately what many of the other witnesses also expressed on the drawbacks of the existing law of partnership. These naturally had particular relevance for co-operative associations, which by their very nature had fairly large numbers of partners and depended mainly on borrowed capital for their establishment. Firstly, claimed Hawes, the restrictions which the law was imposing on the freedom of contract was

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[1] *Ibid.*, pp.160, 167 and 169

[2] *Ibid.*, p.2

particularly anomalous, for the law permitted a trader or partnership to give a 'ruinously high rate of interest for borrowed capital', and yet precluded him or it from 'giving annually that exact sum' which the profits would justify paying. Secondly, the law denied partners justice through the 'want of an easy and inexpensive mode of settling partnership differences, whether between partners or respecting their accounts'.[1] Thirdly, the law imposed an unnecessary limitation on the number of partners, and fourthly, made the acquiring of limited liability Charters and Acts of Incorporation for undertakings of public utility, expensive and difficult. Hawes stated further, a point common to other witnesses, that any change in the existing law of partnership should be accompanied with improvements in the law of debtor and creditor. Moreover, he argued that his second point became more crucial as the numbers in the partnerships went up, such as with working men's associations, and though he did not personally like associations, ('I think that such things are bad'),[2] he thought that they deserved justice. As a remedy to this problem he recommended a summary mode of procedure before the Court of Bankruptcy to settle disputes.

The evidence of Philmore, Stewart, Matthew Clark, Fane and others bore testimony to the fact that the unlimited liability law was serving to keep capital and labour apart. They were all agreed that a change in this law would increase the application of capital, especially by small capitalists, to useful undertakings and so improve the labour conditions in the country, and that it would generally help forge the important union between those who had large sums of capital to invest and those enterprising men of all classes who lacked sufficient capital to develop their enterprise. However, some witnesses, especially Fane, warned the Committee about getting involved in the issue of limited liability to the exclusion of other aspects of the law of partnership. In referring to a point already made, Fane stressed that the 'difficulty of settling disputes between partners by going to the Court of Chancery is such as almost to deter any sane man from ever thinking of entering into partnership'.[3] It was this very difficulty of getting judicial decisions, he said, that

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[1] *Ibid.*, p.112, qu.699
[2] *Ibid.*, p.115, qu.716
[3] *Ibid.*, p.86, qu.548

prevented potential working-men's associations from forming partnerships. Fane stated that partnerships with many members, as would be the case with co-operative associations, felt this situation particularly severely, and to leave these partners at the mercy of each other was a great injustice to the middle and working classes.

In its official Report, which was printed on 8 July 1851, the Committee opened with the adoption of the principles of the previous Committee. It stated too, that 'if it be desired to promote association among the humbler classes for the objects of mutual benefit, no measure will tend more directly to this end than one which will give a cheap and ready means of settling disputes of the partners, and enforcing the rules agreed to for mutual government'.[1] On the question of limited liability, it was stressed that this should be extended more cheaply and easily to the shareholders in undertakings established for the benefit of the community, such as gas-works, roads, baths, wash-houses and so on. Moreover, it said that it would be desirable to remove any legal obstacles which would prevent the middle and working classes from investing or participating in such concerns. As to the subject of partnerships with limited liability generally, the Committee recommended 'the appointment of a Commission of adequate legal and commercial knowledge, to consider and prepare, not only a consolidation of the existing laws, but also to suggest such changes in the law as the altered condition of the country may require'. Such a Commission, it said, should pay particular attention to the need for improved tribunals to consider partnership disputes, and to the controversial question of limited liability. In the meantime, however, they recommended that 'power be given to lend money for periods not less than twelve months', at rates of interest varying in accordance with the normal rate of profit of the business concerned, the claim for repayment of which should be 'postponed to that of all other creditors'. The maker of any such loan should not be liable beyond the sum advanced. Furthermore, in such a situation, proper and adequate regulations should be laid down against the possibility of fraud.[2]

The Committee thus re-affirmed the need for placing co-operative associations within a legal framework, and made the first tentative

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[1] *Ibid.*, p.vi
[2] *Ibid.*, p.viii

steps towards recommending that these associations, along with other trading partnerships, should be permitted to operate with limited liability. Ludlow considered that the Report was favourable as far as it went, but that in general the members of the Committee did not 'appear by any means to have gone to the bottom of their subject', whilst the very suggestion to appoint a Commission was a plain admission of this fact. However, the appointment of a Commission on the Law of Partnership, might, said Ludlow, 'confer inestimable benefit on the country by its labours'.[1]

Meanwhile, Ludlow had been continuing to express the hope that the Whigs would, that session, pass the Bill which he had drawn up as a result of the previous Select Committee's Report and which the Government had been considering for some months. He urged them to 'stamp the last few months, in all probability, of their ministry with the substantial glory of having carried this measure',[2] for it was one which was 'pregnant with hope to the working man'. Moreover, if passed he said, the Bill would represent the 'first time that labour will have met, not with protection, but with justice'.[3]

At about the same time as the Select Committee of 1851 was giving its Report, a deputation was made to Labouchere to pressure him to introduce this Bill and carry it through Parliament. The deputation, which consisted of Lord Ashburton, Robert Slaney, J.G. Marshall M.P., five Christian Socialists (Neale, Hughes, Ludlow, Cooper and Jennings) and a representative of the People's Mill of Leeds, was apparently very favourably received.[4] Labouchere expressed himself 'as entirely persuaded of the justice of their claim for legal protection, whatever doubts he might entertain as to the success of co-operative associations'. He promised that if possible he would introduce the Bill and also undertake to carry it through Parliament that session. Even so, he said that he could not make a firm promise because of the 'difficulties of the session', which was presumably a reference to the fact that the Cabinet had more than

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[1] *Christian Socialist*, Vol.ii, 2 Aug. 1851, p.66

[2] He was thus, at this early stage, anticipating the fall of the Whig Ministry.

[3] *Christian Socialist*, Vol.i, 12 April 1851, p.187

[4] The deputation was made on 5 July 1851.

enough to do in simply continuing in office.[1] In fact, at this time, the Whig Government not only had a weak Parliamentary following, but was being made more fragile by the dispute between Lord John Russell and Lord Palmerston.

Despite Labouchere's assurances, however, it is possible to argue, as Christensen has done, that the Whig Government had no intention of introducing the Bill. Christensen believed that the Whigs, needing the support of the manufacturers, would not provoke them by bringing in a measure which might pose a threat to their economic position. Many manufacturers, he said, undoubtedly feared that 'an absorption of redundant labour through co-operative workshops would necessarily result in higher wages, weaker competitiveness and, in consequence, reduced incomes'.[2] Whether or not this claim is a valid one, Labouchere appears to have been playing for time when he requested the members of the deputation to go and prepare a list for him of the approximate total number of members of co-operative associations in England. Information relating to this request was quickly printed in *The Christian Socialist*,[3] and societies were asked to forward returns of the numbers of their members and persons employed by them, and to give some indication of the nature of their various businesses.

Despite the valiant efforts of the Christian Socialists in rallying co-operators and in pressuring the Government, it was soon to be realised that the Bill would not be introduced that session, and as a consequence the whole issue quietened down for some months. Nevertheless, Ludlow and his colleagues continued to write on the subject and to demand that the experiment of 'labouring capitalists' working in co-operation should be given 'a fair trial'. They referred also to the question of limited liability, and requested, with the Select Committee of 1851, that the law of partnership should be the subject of 'careful and immediate revision'.[4] On this matter, the Christian Socialists praised an article in *The Times* of 30 October 1851,[5] which

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[1] *Christian Socialist*, Vol.ii, 12 July 1851, p.23
[2] T.Christensen, *Origin and History of Christian Socialism 1848-54*, p.276 (Footnote)
[3] *Christian Socialist*, Vol.ii, 19 July 1851, p.40
[4] Ludlow, *Chamber's Papers for the People*, pp.21/2
[5] See *Christian Socialist*, Vol.ii, 8 Nov. 1851, p.299

called for limited liability in partnerships. The existing system of obtaining limited liability through Royal Charters was unsatisfactory, said the author of this article, because such charters were only granted 'where persons possess influence, and are prepared for a large expense, or where the scheme happens to jump with the fancy of the Minister of the day'. Furthermore, he argued that the existing situation resulted in trade, on the one hand, being undertaken 'by parties who raise money recklessly', or on the other, being confined 'to houses of large existing capital'.[1]

However, as the time moved towards the new session, the Christian Socialists again prepared themselves for action. On 18 December 1851, it was decided that a new deputation from the Society for Promoting Working Men's Associations, consisting of four members from the Council (Hughes, Neale, Louis and Lord Goderich) and four from the Central Board (Cooper, Pickard, Jennings and Locke), should be appointed to again wait upon Labouchere and press on him the necessity of introducing, into Parliament, the Bill to give legal protection to associations of working men 'as early as possible this session'.[2] Hughes, in the opening article of the first *Journal of Association*, drew the attention of co-operators to this new deputation, and appealed to them to support it. Hughes outlined the great amount of work and effort that the Christian Socialists had put in to obtain such a Bill, and said that the only reason it had not already become law was because of the apathy of the working classes, ('you didn't show that you cared a straw about the matter'.)[3]

Hughes claimed that on the last occasion associations were requested to send in petitions (8 February 1851) only twelve were sent to Labouchere. He requested that this time all societies should take the trouble to fill up the provided form of petition and to follow the instructions for sending it to the Government. He stressed further that the situation was slowly deteriorating, for while as yet the associations were still only doing business in small quantities, as they expanded the incentive for an associate to defraud his society would be increased.

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[1] *The Times*, 30 Oct. 1851, p.6
[2] *Christian Socialist*, Vol.ii, 27 Dec. 1851, p.409
[3] *Journal of Association*, 3 Jan. 1852, pp.1/3

The deputation was received by Labouchere on 27 January 1852. The President of the Board of Trade this time appeared far less sympathetic, and asked for more statistics on the co-operative movement. He would not commit himself beyond promising to give an answer as to what the 'Government would be prepared to do in relation to the Bill, early in the Session', and said that the labour conflict in the iron trades had worsened the situation. He said that he would have to refer any measure to provide full legal protection to co-operative associations 'again to the Law Officers of the Crown'.[1] The Christian Socialists not only regretted their forced regression to a less favourable position, but now also realised that they could no longer count on the Whig Ministry for any active help. Even so, they must have taken heart in the near certain knowledge that the days of the Whig Government were numbered.

However, neither Slaney nor the Christian Socialists were prepared to let the matter drop, and on 17 February 1852, Slaney moved for a further Committee 'to consider, suggest, and report from time to time measures to remove legal and other obstacles which impede the investments and industry of the working classes',[2] and to consider the need for a law permitting partnerships with limited liability. Labouchere confessed to favouring the removal of any restrictions in the way of working men's associations and co-operative societies generally, but he also stated that he was in favour of unlimited liability, and that he thought that savings banks were the best investments for the savings of working men. Labouchere said that the Government was about to appoint a Commission to consider the whole law of partnership and, as a result, after a debate, Slaney withdrew his motion for a Select Committee.

Select Committee or no Select Committee, the situation was radically altered only ten days later when Russell's Whig Ministry, as expected, crumbled to defeat, and was replaced by Lord Derby, Disraeli and the Tories. The Whigs with what Ludlow called their 'theoretical tendency to reform'[3] had done nothing, but the Tories, who were intent on making a good impression with the working classes, soon remedied this situation. The Tory Party was less

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[1] *Ibid.*, 2 Feb. 1852, pp.44/5
[2] *Ibid.*, 23 Feb. 1852, p.65
[3] Ludlow, *Politics for the People*, 8 July 1848, p.200

obsessed by laissez-faire attitudes than were the Whigs, and giving legal protection to co-operative associations, while not likely to arouse any really violent opposition, might go a long way towards pacifying the workers and calming down some of the industrial unrest which was at that time manifesting itself. It was for these reasons that the Home Secretary, Spencer Horatio Walpole, made no objection when Slaney moved, on 18 March, for leave 'to bring in a Bill to legalise the formation of industrial and provident partnerships'. All that this law would do, Slaney said, would be to simply extend the provisions of the Friendly Societies' Acts to bodies of working people who joined together in partnership 'so far as to enable them to vest their property in the hands of directors of their own choosing, and to appoint a tribunal for deciding disputes among themselves'.[1] The Christian Socialists, now with success in sight, prepared themselves to guard against any faltering at the final hurdle, and called once more on co-operators to forward petitions to the Government.

[1] *Journal of Association*, 22 March 1852, p.97

CHAPTER IV

The Industrial and Provident Partnerships' Bill becomes an Act

The Bill to legalise the formation of Industrial and Provident Partnerships, which was brought in by Slaney and seconded by Tufnell and Southeron, was read a first time on 19 March 1852 and then ordered to be read a second time 'on Tuesday week'.[1] However, when the Christian Socialists looked at the Bill they found that a clause had been added to it since its preparation by Ludlow, to the effect that the principle of unlimited liability should apply to all kinds of associations. The new clause VIII stated that nothing could 'restrict in anywise the liability of the members of any society.....to the lawful debts and engagements of such society',[2] a condition which seemed grossly inconsistent with clause VI, which insisted that the rules of an association should stipulate that the interest of any member at any time should be restricted to £100. It was in the hope of getting clause VIII deleted from the Bill that the Council of Promoters decided, on 25 March, to send Hughes and Neale to meet Slaney and Southeron, for, as was pointed out, the clause would have the effect 'of making each association and every member of it, liable for the contracts of, and bills drawn by, any member of such association'.[3]

The following week it was reported in *The Journal of Association* that this deputation to Slaney had resulted in the latter promising to 'use every effort to get the present obnoxious liability clause in the Bill modified'.[4] It was also reported in this issue that forty petitions had been received by the Christian Socialists to forward collectively to Parliament, and that others had been sent directly to local M.P.s, with the object of drawing the attention of politicians to the need for the Bill. Co-operators in general were thus showing, at long last, that

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[1] *The Times*, 20 March 1852, p.2
[2] *A Bill to Legalise Industrial and Provident Partnerships*, Bills, Public (2) 1852, pp.439/44
[3] *Journal of Association*, 29 March 1852, p.108
[4] *Ibid.*, 5 April 1852, p.116

they were really concerned to get their associations and societies firmly established on a proper and adequate legal basis. Nevertheless, Slaney was unable to introduce the Bill on the proposed date for its second reading on account of the Irish M.P.s 'talking the House out', and, as a consequence, this reading had to be postponed until after the Easter break.

Meanwhile, in *The Edinburgh Review* of April 1852, W.R. Greg, an opponent of Christian Socialism, published a significant and influential article – 'Investments of the Working Classes'. This article, which was widely acclaimed by co-operators, fairly represented what many informed people already felt on the matter, and can have only favourably influenced uncommitted M.P.s through its justification of the Bill. Greg, who upheld the prevailing doctrines of political economy and who was thus opposed to the economic theories of socialism as expounded by the Christian Socialists, argued convincingly that justice alone demanded that associations be given the protection of the law. 'We believe', he said, 'that the working classes now possess so much power and so much intelligence, that it is idle, and would be foolish, to thwart any of their legitimate endeavours to help themselves'. He was prepared to concede, moreover, that co-operative associations 'may be one of the most powerful of the many influences now at work for the education of the lower orders of the people; that wisdom will be gained, if not wealth, from the industry, self-control, and mutual forebearance needed to conduct them'. Although he clearly believed that the optimism of the Christian Socialists and co-operators was unfounded, he argued that the advocates of socialism should not be placed in a position where they could attribute any failure to their schemes 'to the injustices of the law – to the envy or the enmity of the rich and great'.[1]

The prevailing 'injustices of the law', were, however, soon to be acknowledged by Parliament, for on 21 April 1852 the *Industrial and Provident Partnerships' Bill* was read a second time. Slaney, in moving for this reading, told M.P.s that it came before the House on the recommendation of two Select Committees, and that its purpose was 'to enable poor people with small sums invested in partnership

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[1] *Essays on Political Science*, Vol.i, pp.456/7. (Original article was published in *The Edinburgh Review,* Vol.xcv, pp.405/53)

transactions to have recourse when necessary to a cheap tribunal, and to bring those small partnerships within the meaning of the Friendly Societies' Act'.[1] Joseph Henley, Lord Derby's President of the Board of Trade, made a few brief favourable comments and recommended that the Bill should go before a Select Committee for a more detailed consideration. The Bill, which still contained the unlimited liability clause, was then carried unopposed. The House of Commons, therefore, in affirming the principle of the Bill had, as was claimed in *The Journal of Association*, 'solemnly admitted that industrial associations of working men ought to be legalised'.[2]

The proposed Bill, which was published in full by the Christian Socialists in *The Journal of Association,*[3] was submitted to a Select Committee which included two Cabinet ministers, Henley and Lord John Manners, and several sympathisers, including Tufnell, Ewart, Southeron and Slaney, who acted as chairman, as well as J.A. Smith, the long-standing opponent.[4] This Committee invited representatives of the Christian Socialists to attend its sittings, and as a result Ludlow, Neale, and Hughes were able to discuss the clauses of the Bill with the Committee, and presumably expand on and justify the existence of each such clause. (Except, of course, clause VIII). Four new clauses were inserted into the Bill, three of which (No's V, VI and XIII) were concerned with the legal procedure in the event of a refusal to accept the award of arbitrators, and the fourth (clause IV) to stipulate that a member of an association would be automatically withdrawn from membership should he become bankrupt. In addition, various other clauses were amended, but these were concerned primarily with a 'tidying up' of the language used, and the basic purposes and objectives of the Bill were left unaltered. However, although the unlimited liability clause (now clause XI) was retained, it was the subject of an important modification. The words – 'but every such member shall, in respect of such debts and engagements, be subject to all the liabilities imposed by the law upon

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[1] *Hansard*, Third Series, Vol.cxx, 21 April 1852, p.967
[2] *Journal of Association*, 26 April 1852, p.137
[3] *Ibid.*, 3 May 1852, pp.147/9
[4] The names of the fourteen committee members were published in *Journal of Association*, 7 June 1852, p.185

the partners in any partnership'[1] – were deleted, and were replaced by – 'provided always, that no person should be liable for the debts and engagements of any such society after the expiration of two years from his ceasing to be a member of the same'.[2] When one considers that ordinary joint stock companies and partnerships were still subject to unlimited liability, and that the period of responsibility for past members of joint stock companies was three years and for persons leaving other partnerships six years, this was not, perhaps, now an unreasonable clause.

The Bill, which passed through the Select Committee on 27 May, now extended to fourteen clauses, and was reported under the amended title of the *Industrial and Provident Societies' Bill.* This amended Bill was published in *The Journal of Association* and was here accompanied by an expression of hope that it might become an Act that same session. Ludlow, jubilant at the prospect of success, praised the Select Committee for its sanction and elaboration of the Bill, which was read for a third time in the Commons on 3 June. No formal debate took place at this reading, though one member by the name of Carter moved a clause to limit the liability of partners and associates to the extent of their shares or interest in the concern. This proposed 'eleventh hour' amendment to bring in limited liability was, however, rejected, and the Bill was passed as presented by the Select Committee.

The Bill then went to the House of Lords where it came under the care of Lord Harrowby, who was secured to take charge of it by the Earl of Ripon who was himself too sick to do so, and was read there a first time on 4 June. Its passage was thereafter swift and uncontroversial. It was read a second time on 8 June, quickly passed through Committee and was reported to the House on 10 June, and was read a third time the following day. One minor amendment was inserted into the Bill in its passage through the Lords, but this was of little significance, and in fact the Bill was returned to the Commons where it was finally passed on 15 June 1852.

Meanwhile, success now assured, Slaney continued his fight to improve the conditions of the working classes generally. On 11 June

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[1] *Bill to Legalise Industrial and Provident Partnerships*, p.443, clause VIII

[2] *Bill as amended by the Select Committee*, p.452, clause XI

1852, he advanced in the House the opinion that the condition of the 'lower' classes was deteriorating, and he asked for a Commission 'to consider, suggest, and report from time to time preventative and remedial measures, to benefit the social condition of the working classes, and for removing social and other obstacles for their improvement'.[1] His motion for the 'adoption of measures to benefit the social condition of the working classes' was rejected, but this cause, together with those of his efforts which have been documented in this study to guarantee the successful passage of the *Industrial and Provident Societies' Bill,* clearly suggest that Raven's tendency to belittle his endeavours are without justification.[2] The Parliamentary efforts of Slaney in the years under discussion have shown him to be a man of deep concern for the poor and the working classes generally, and were crucial in ensuring the success of the Christian Socialists' Bill.

The eventual passage of the Bill through Parliament prompted some relieved and optimistic comments from Ludlow. With only the Royal Assent still required he wrote that, whilst the Bill was not 'a full measure of justice', and whilst various restrictions were imposed by it relating to the contracting of loans, the amount of interest of individual members and so on, which were not imposed on private traders, 'the instalment given is certainly a much larger one than is usually obtained', and 'few, if any, co-operative stores or working associations will find any difficulty in carrying on their trade under its regulations'. He pointed out that those co-operative stores which had been nominally registered under the Friendly Societies' Act, but which had placed themselves outside of its protection by dealing with the public, were now 'brought within the terms of this Act'. He went on to tell co-operators that 'it rests with us to make that Bill, - so insignificant to the partisan squabblers of the day, that the papers hardly noticed it, even by name, in its passage through Parliament, - the very cornerstone of England's future greatness'. Finally, in anticipating some who might feel unable to operate under unlimited liability, he said that though he would rather not have seen that clause in the Bill, 'if its presence there prevents the working classes

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[1] *Hansard*, Third Series, Vol.cxxii, 11 June 1852, p.516

[2] See Raven, *op. cit.*, p.289

from co-operating, they never will be fit to co-operate, and don't deserve to enjoy the benefits of co-operation'.[1]

The Christian Socialists, who despite Slaney's important efforts were chiefly instrumental in removing the legal difficulties from the path of co-operative progress, naturally drew a sigh of relief when the Bill finally became an Act on 30 June 1852 on its receiving the Royal Assent. Though of course disappointed, they quite wisely accepted the unlimited liability clause, for any opposition to it may have resulted in another long wait for success. That particular Parliament's life was drawing to its close, and the manufacturers were threatening right up until the last moment to oppose the Bill, and therefore any possible postponement would have meant that their efforts might well have had to have begun all over again.

The provisions made for co-operative associations under the *Industrial and Provident Societies' Act, 1852,* (15 and 16 Vict. Cap.XXXI), were as follows. Any unlimited number of persons were allowed to establish a society through their own voluntary subscriptions for any purpose permitted by the laws in force in respect to friendly societies, or by that Act, by carrying on 'in common any labour, trade or handicraft.....except the working of mines, minerals or quarries beyond the limits of the United Kingdom' or the 'business of banking'.[2] The Act, like the Friendly Societies' Act, laid down exactly what the rules of each society should provide for. Such regulations regarding rules had not been unpopular with the friendly societies, and there was no reason to suppose that they would be so with industrial associations. The rules of each such registered society were required to contain clauses which allowed for payments to be made to members and persons employed by the association for work done or services rendered, which related to the appointment of managers, the making of contracts and loans, the withdrawal and expulsion of members and the auditing and keeping of accounts, and which provided for the arbitration of disputes and the dissolution of the society. Moreover, the rules were required to stipulate that the rate of interest on any

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[1] *Journal of Association*, 14 June 1852, pp.201/3

[2] *Industrial and Provident Societies' Act*, clause I

contracted monies owed on loan by a society should 'not exceed four times the amount of paid-up subscriptions'.[1]

The interest of any member of an association was to be non-transferable, but the whole amount due to such a member had to be paid to him on his withdrawal from the society, the conditions of which were to be contained in the rules. Moreover, as has been mentioned, any member who became bankrupt or insolvent was automatically to be excluded from membership. Associations were provided with a summary tribunal to which they might appeal in cases of dispute, and the awards of arbitrators were to be enforceable in the County Courts where the sum involved in dispute was within their jurisdiction, or otherwise in the higher courts. Such enforceability in the courts was possible 'when either party in dispute refuses to accept the decision of arbitrators'.[2] Furthermore, all the laws relating to friendly societies were to be applicable to any association formed under the Act, and to any of such an association's members or officers. However, the Registrar of Friendly Societies, who now became also the Registrar for Industrial and Provident Societies, was granted the power to endorse the rules of any society to the effect that any of the provisions under the Friendly Societies' Act were not applicable in its case. In addition, the provisions of the Friendly Societies' Act giving such societies 'priority over other creditors as to the estate of officers and exemption from stamp duties in certain cases, were not to apply to societies constituted under this Act', although exemption from stamp duties was to be granted 'as relates to any copy of the rules of such society and certain other for the Registration, Incorporation and instruments and documents'[3] of it. Neither were the restrictions imposed on friendly societies relating to the investment of funds to apply to associations registered under this 1852 Act.[4] Moreover, no such registered association 'could be considered to be within 7th and 8th Vict. c.110', that is the *Act for the Registration, Incorporation and Regulation of Joint Stock Companies*.[5]

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[1] *Ibid.,* clause II
[2] *Ibid.*, clause V
[3] *Ibid.*, clause XII
[4] See *ibid.*, clause VII
[5] *Ibid.*, clause VIII

Furthermore, no society could be registered under the Act unless the share or interest of each of its members was limited to £100, nor if any member or other person was entitled 'by way of annuity to any interest in the funds of such society to an amount exceeding £30 per annum'.[1] Despite these restrictions the unlimited liability clause remained, and each member of an association was fully responsible for all the 'lawful debts and engagements'[2] of his society, right up until two years after his ceasing to be a member of the same. Finally, each society was required to send annual returns of assets and liabilities, and other documents or details as and when required and directed, to the Registrar of Friendly Societies.

[1] *Ibid.*, clause IX
[2] *Ibid.*, clause XI

CHAPTER V

The new legal position and its implications and effects

Co-operative societies of all types, including consumers' and producers' associations, now finally had the full backing and protection of the law. The new Act allowed those societies which had formerly been registered under the Friendly Societies' Act to sell to non-members, and thus extend their activities, whilst trading societies of more than twenty-five members, which had previously been compelled to operate as joint stock companies if they had desired legal protection for their efforts, now received, as G.D.H. Cole stated, 'a status of their own parallel to that of companies but essentially different'.[1] Perhaps the most important difference was that the new Act made shares non-transferable. Had societies been forced to operate with transferable shares they would have been compelled to run the grave risk of losing their identity, for the shares in both co-operative societies and in industrial and trading associations may well have been bought up by persons with no interest in preserving the co-operative principle. In fact, this situation did almost invariably materialise with societies (the 'Working- class Limiteds'), such as the Birstal Joint Stock Provision and Clothing Company and the Bacup Commercial Company's Mill, which became registered as joint stock companies. The new Act, in requiring that shareholders who wished to dispose of their subscriptions should sell them back to the society or get that society's consent for a transfer, made severance from the co-operative principle much more difficult.

Industrial and provident societies were also saved from the danger of their interests falling into a few hands, as would have been the case under the Joint Stock Companies' Act, through the imposition by the new Act of a maximum share interest of £100 for each

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[1] G.D.H.Cole, *Century of Co-operation*, p.119

member. Even so, members were permitted to make loans to their societies of up to four times the amount of the total subscribed capital, and societies registered under this Act, unlike friendly societies, were permitted to invest their funds and resources in the manner best suited to the development of their particular operations.

However, although the clauses so far considered, along with the others which enabled societies and associations to contain unlimited numbers of members, 'to sue and to be sued in the names of their officers', to have 'a summary tribunal' to which they could 'appeal in cases of disputes' and to have the 'power to bind their members by their rules',[1] were just what was required in an Act of this nature, there were two observable and predictable limitations contained within it. One of these resulted through the inclusion of a clause and the other from an omission of one. Firstly, the inclusion of an unlimited liability clause was probably bound to limit investment, and thus participation, in co-operative undertakings. Indeed, the situation was such that even after the Act, the idea adopted by the Christian Socialists of vesting the property of an association absolutely in trustees, so making these the absolute owners, still seemed favourable, even necessary. In fact, Neale stated categorically that in all societies enrolled under this Act, the property would 'always be vested in the trustees', who, he said, could be anyone in whom the members had confidence. Such trustees, he stressed, would not 'be subject to any responsibility excepting for the property which actually comes into their hands, unless they are themselves concerned in the management of the business'.[2] Furthermore, the property would pass from one set of trustees to another, simply by the latter's appointment as trustees by the society. However, under this arrangement, the members had no legal control over the trustees and, as Cole has pointed out, societies without 'benevolent' sponsors were likely to feel particularly averse to this situation, since as most observers agreed 'it was necessary for such

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[1] *First Report of the Society for Promoting Working Men's Associations*, p.8

[2] Appendix to *Transactions of the Co-operative League*, pp.64/5

trustees not to be actual members of the societies[1] for fear of their being treated by the law as co-partners and thus forfeiting its protection'.[2] Even so, it seems that the 1852 Act was passed a little before the 'time was ripe' for limited liability, for the whole situation was remedied in the next ten years following the favourable Report of the Royal Commission which was appointed at the end of 1853 to consider the issue in relation to the law of partnership. In 1855 limited liability was first extended to all joint stock companies who cared to apply for it, by an *Act for Limiting the Liability of Persons in certain Joint Stock Companies,*[3] and co-operative societies and associations were finally brought into line with this in 1862 by an *Act to Consolidate and Amend the Laws relating to Industrial and Provident Societies.*[4]

The second major limitation of the Act was that it omitted to make provisions for the joint or federal action of societies. Tidd Pratt, the Registrar of Friendly Societies, was still refusing to register friendly societies which were organised on a branch or federal basis because he considered these unlawful under the Corresponding Societies' Act, and it was thus natural that he should extend this attitude to co-operative and industrial associations. It was this omission of such a 'federal action' clause that perhaps prevented the potential union of the whole co-operative movement as was attempted by Neale and the Christian Socialists. However, the Act of 1862, whilst not providing fully for federal action, made it lawful for one co-operative society to hold shares in another, and, as a consequence, not only enabled the stores to become joint owners of wholesale societies like the C.W.S.,[5] but also, as Cole said, 'made it possible for consumers' societies to advance capital to producers' societies and thus widened the opportunities for co-operative production'.[6]

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[1] However, Neale was not of this opinion. He felt that trustees could be members providing that they played no part in the management of the business. (See *ibid.,* p.65)

[2] Cole, *op. cit.*, p.120

[3] 18 and 19 Vict., c.133 (14 Aug. 1855)

[4] 25 and 26 Vict., c.87 (7 Aug. 1862)

[5] Co-operative Wholesale Society

[6] Cole, *op. cit.*, p.123

Finally, the 1852 Act failed to clear up the question of the liability of co-operative societies to income tax. The legislation of 1842, which granted income tax exemption to friendly societies, did not include exemption from income arising from the profits of trade, and so associations became liable for such tax. Cole has recorded the long dispute which thereafter took place between the income tax authorities and co-operative associations, which was partly settled by the Act of 1862, in which there was a clause exempting such societies from this tax, but which continued beyond this time over the issue of the liability of societies to tax on income from the ownership or occupation of land, and of the liability of individual co-operators 'whose incomes were above the exemption limit' to tax on 'interest accruing to them from share or loan capital in co-operative societies'.[1]

Despite these limitations the Act was not only accompanied by a feeling of satisfaction and relief by co-operators that their societies and associations now had a legal basis, but also with many expressions of optimism for the future from various quarters, including the ranks of the Christian Socialists. Neale, for instance, hoped that the Act would mark the 'beginning of a new era for the industrious population',[2] whilst John Stuart Mill not only stated that what was required next was that 'the whole of the working-class should partake of the profits of labour',[3] but advanced the opinion that of all the factors at work to advance the physical well-being, the social dignity and the moral and intellectual improvement of the working classes, there was 'none so promising as the present co-operative movement'.[4] Indeed, this was an optimism that was not without some foundation, as the statistics that will be mentioned later reveal, and certainly Ludlow and Jones were able to write fifteen years later that the Act was 'probably the most important 'enabling

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[1] *Ibid.*, pp.120/2

[2] Appendix to *Transactions of the Co-operative League*, Part II, No.1, p.63

[3] J.S.Mill, from a speech made at the Crown and Anchor Tavern, London. (Quoted from G.J.Holyoake, *History of Co-operation*, p.299)

[4] Mill, from a speech made at the opening of the Liverpool Provident Association. (Quoted from Holyoake, *op. cit.*, p.365)

Act'[1] of the whole period', and could be termed the ''Magna Charta' of co-operative trade and industry'.[2]

In fact, the Act of 1852 came, as Pollard said, at 'a time when co-operative thinking was being transformed from the utopian outlook of the Owenists and the early Rochdale Pioneers, which saw true socialism completely replacing capitalism, to an attitude which saw co-operation becoming integrated into the capitalist system'.[3] The existing system was beginning to show some benefits for the working classes, and now appeared to promise greater progress. Wages, particularly of skilled workers, were slowly rising, factory conditions were being eased, and many working-class leaders were acquiring a little property and, therefore, a 'stake in the country'. Indeed, the Industrial and Provident Societies' Act, which, according to Ludlow and Jones, was 'anticipated by the spontaneous efforts of the working class',[4] was itself both a result of this changing attitude and a further means through which its validity was confirmed and thus perpetuated. Those who wished to replace the existing system with a new socialistic order had to admit with Neale that this and other Acts were serving 'to prove the facility with which measures conducive to social improvements may be obtained as compared with measures involving an alteration in the balance of political power'.[5]

The attainment of the 1852 legislation, however, marked not the end of a struggle but merely the successful negotiation of a difficult hurdle. As yet co-operative societies and associations existed very much as independent organisations, and all the while such bodies were isolated from one another they were restricting their own capacity for development and were exposing themselves to the danger of becoming self-sufficient units and possibly entering into

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[1] By an 'enabling Act' they meant one which would serve to emancipate, develop or foster certain forms of activity amongst the working classes. Such thus differs from a 'protective Act', like the 'Ten Hours Act', which would aim at restraint.

[2] Ludlow and Jones, *op. cit.*, p.48

[3] S.Pollard in *Essays in Labour History*, p.106

[4] Ludlow and Jones, *op. cit.*, p.48

[5] Appendix to *Transactions of the Co-operative League*, Part Two, No.1, p.63

competition with each other. Thus, although denied the right of an economic union by the omission of a clause from the Act allowing federal action, it was seen by many co-operators to be necessary to establish the 'spiritual' unity of the whole movement and 'infuse it with the spirit of fellowship and unflagging devotion to the cause of association'.[1] Quite naturally the Christian Socialists, who had gained the confidence of many labour leaders and had laid the very foundations for the unity of the movement through their legal and other efforts, were in the most favourable position to attempt to forge this union. It was for this reason that the Council of Promoters decided to call a Co-operative Conference, which they hoped would become an annual gathering, the first meeting of which was to be held on 26 and 27 July 1852. Delegates from all known bodies were invited, with the primary initial object of determining the best ways of continuing the work of associations with reference to the new Act. At this Conference, which was well attended, it was decided that it was desirable 'that all Associations and Stores be enrolled under the Act.....legalising the formation of Industrial and Provident Societies'.[2] A resolution was also passed 'that to promote this object a short statement be prepared by the Council of the Society for Promoting Working Men's Associations,[3] of the advantages to be derived from enrolment under the Act; such statement to be sent to the different co-operative bodies throughout the kingdom', and a further proposal was passed to the effect 'that model-rules, in accordance with the Act, be prepared and enrolled for the guidance of all Co-operative Societies who may wish to avail themselves of the said Act'.[4] These resolutions were quickly acted upon, and within a few months the 'model-rules' for both industrial and provident

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[1] *Journal of Association*, 14 June 1852, p.202
[2] *Report of the Co-operative Conference*, p.51
[3] The function of the Christian Socialists had been modified by the Act, and thus the 'Society' was about to be reconstituted as the 'Association for Promoting Industrial and Provident Societies'.
[4] *Report of the Co-operative Conference*, pp.52/4

societies[1] had been drafted by the Christian Socialists and approved by the Registrar (Tidd Pratt).

Despite the relative failure of succeeding Co-operative Conferences and the attempt to unite the whole co-operative movement, the increase in sizes and numbers of societies and associations over the years following 1852 gives some indication of the remarkable success which the co-operative principle had among the working classes. This was a success which was not only anticipated by the Christian Socialists, but which was made possible by the Act of Parliament which they had been chiefly instrumental in bringing about. Tidd Pratt's returns for 1865 reveal that there were by this time six hundred and fifty-one registered societies, and that these, together with the more than two hundred societies[2] that were not registered, had a total membership of well over two hundred thousand. Moreover, the economic position of the four hundred and seventeen societies that sent in returns indicates that the restrictions imposed by the 1852 Act relating to individual share interests and the borrowing of capital, were working very successfully, for, as Ludlow and Jones pointed out, their total 'balance in hand (£136,923) exceeded their loan capital (£112,733) and their trade liabilities (£273,480) were less than a quarter of their assets (£1,105,685)'.[3] The progress of the Rochdale Pioneers, which was a reflection of the progress of the whole movement, is indicated by the increase from 630 members and funds of £2,785 in 1851, to 2,703 members and funds of £27,060 in 1859, and to 8,892 members and funds in excess of a quarter of a million pounds in 1876. Similarly, the business done by the Co-operative Wholesale Society, whose existence it will be remembered was made possible by the 1862 Act, increased from just over fifty thousand pounds in 1864 to well over two and a half million pounds in 1876. Indeed, within twenty years of the passage of the 1852 Act, co-operators had not only increased in numbers and strength, but had progressed from being what Hughes described as

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[1] A copy of these was published as a *Form of Rules for an Industrial Society established under the Industrial and Provident Societies' Act, 1852*

[2] This figure was estimated by Ludlow and Jones (See Ludlow and Jones, *op. cit.*, p.139)

[3] See *ibid.*, p.137

'objects of a somewhat contemptuous patronage'[1] to being the holders of a respected position in society.

It is perhaps paradoxical, that amid this great success, the associations actually created by the persons whose legal work made success possible, should, without exception, prove to be failures. The Christian Socialists themselves attributed these failures to their own lack of care in selecting personnel, especially managers, whilst others, as Gregg has pointed out, have put forward the view that over-assistance from the 'top' was responsible – 'money too readily available, rules and organisation ready-made, in place of a careful collection of funds by the workmen and a planning of their own organisation',[2] as was the case with the Rochdale Pioneers. However, the Rochdale co-operators were at the time concerned solely with the simple process of selling 'necessities' retail, while the Christian Socialist associations were engaged in actual production, such as of clothing and buildings, which involved a larger capital outlay and a less certain market. None of the associations lasted long,[3] but the one which endured longest was a bakers' association, which was engaged in the activity most closely akin to the retail store. Despite Ludlow's belief that 'consumption however important……should be kept sub-ordinate to production',[4] it was not until consumers' co-operation, through the retail stores, was firmly established, that co-operative production really became successful. It was because of the failure of their associations, and the belief that men needed 'moral preparation' for co-operation, that the Christian Socialists turned, after 1852, to work in the field of adult education.[5]

In conclusion, then, the legal situation in which co-operative associations found themselves in 1852 was a very different one from that in 1850. The several inadequate, and in many ways inappropriate, alternatives open to them in 1850, such as to register

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[1] T.Hughes, *Report of the Fourth Annual Co-operative Conference*

[2] P.Gregg, *Social and Economic History of Britain, 1760-1965*, p.329

[3] For an account of the failure of some of these see Ludlow, 'Autobiography', Ch.XXIV

[4] Ibid., Ch.XXIV, p.24/16

[5] It was they who established the London Working Men's College in 1854.

under the Frugal Investment Clause of the Friendly Societies' Act, to form themselves into joint stock companies or to operate under the existing partnership laws, were replaced by the legal protection offered under the *Industrial and Provident Societies' Act, 1852,* which was 'tailor-made' to their peculiar needs. This Act, which extended to them provisions similar to those already enjoyed by the friendly societies, did however have a number of limitations, notably its stipulation of the unlimited liability of associates and its lack of recognition for joint or federal action by societies, and these were not remedied until 1862. Even so, the majority of co-operators were satisfied with the Act, and its limitations do not appear to have seriously handicapped them. Indeed, the rapid expansion of the co-operative movement, which began in or around 1852, suggests that the Act not only came at the right time, but also actually gave a boost to co-operators. The bulk of the credit for the Act must go to the Christian Socialists, through the continuous flow of evidence, information and pressure which they brought to bear on the Government of the day, upon Slaney and the other sympathisers in Parliament, upon the Select Committees of 1850 and 1851 and upon their fellow co-operators, as well as through their actual drafting of the Bill and assistance to the Select Committee appointed to consider it. On the other hand, the persistence and endeavour of Slaney[1] in securing two Select Committees and in fighting successive Governments to approve the Bill cannot go unnoticed. In fact, in securing the passage of this Act, the Christian Socialists and Robert Aglionby Slaney had contributed a great deal to the legalisation of the working-class movement generally, and in setting that movement on a path of what proved to be a prosperous legality. The 1852 Act was one of a series that served to encourage the Victorian virtues of thrift and self-help, and that ensured that the social evolution of England was brought about in a peaceful manner.

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[1] Slaney retired from Parliamentary life that Session. A fact, said Neale, that 'every friend of the working classes must regret'. (Appendix to *Transactions of the Co-operative League*, Part Two, No.1, p.63)

APPENDIX

In many of the Christian Socialist tracts and periodicals the writers used either their initials or pseudonyms. The following is a list of some of the contributors to (a) *Politics for the People* and (b) *The Christian Socialist.*

(a) This list was compiled by G.J. Gray, the compiler of the bibliography of F.D. Maurice's writings, from a copy of *Politics for the People* originally belonging to John W. Parker, the publisher. (See Raven, *op.cit.,* Appendix).

Bellenden Ker, H.	-	'Dodman'
Kingsley, Rev. C.	-	'Parson Lot'
Ludlow, J.M.	-	'John Townsend' or 'J.T'
MacMillan, D.	-	'X.Y.Z'
Mansfield, C.B.	-	'Will Willow-Wren'
Maurice, Rev. F.D.	-	'A Clergyman'
Stanley, Rev. A.P.	-	'S'

(b) This list was written by J.M. Ludlow in his copy of *The Christian Socialist,* Vol.i. (See Raven, *op.cit.,* Appendix).

Campbell, Alex.	-	'Sacred Socialist'
Froude, J.A.	-	'F'
Furnivall, F.J.	-	'F.J.F'
Gaskell, Mrs.	-	'Authoress of 'Mary Barton''
Hughes, T.	-	'H'
Hughes, T. and Ludlow, J.M.	-	'Janus'
Kingsley, Rev. C.	-	'Parson Lot' or 'A West-Country Man'
Ludlow, J.M.	-	'J.T'
Mansfield, C.B.	-	'C.B.M'
Maurice, Rev. F.D.	-	'A Clergyman'
Neale, E.V.	-	'N.V.E'
Shorter, T.	-	'Radical Tom' and 'T.S'
Stanley, Rev. A.P.	-	'S'
Strachey, E.	-	'E.S'
Walsh, C.R.	-	'Jacob'

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The first Industrial and Provident Societies' Act was critically important to the development of the Co-operative Movement in England. Before 1852 co-operative societies and associations were denied the full protection of the law and so enjoyed a rather precarious existence.

Between 1850 and 1852 the Christian Socialists together with Robert Slaney, the M.P. for Shrewsbury, worked tirelessly to remedy the situation. Parliament was persuaded to set up two Select Committees and evidence was presented to these. Meanwhile, the support of co-operators around the country was marshalled.

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